STAFF REPORT

Council Meeting Date: April 26, 2022

Subject: Initial resolution authorizing the issuance of 2022 Interim Limited Obligation Bonds (LOBs) and setting a Public Hearing on the issuance for May 10, 2022.

Staff Resource(s): Tony McDowell, Finance Director

Action Requested: Adoption of an initial resolution authorizing the City Manager or the Finance Director to pursue and negotiate on behalf of the City debt financing for capital projects with a draw program that includes the issuance of interim Limited Obligation Bonds (LOBs) in an amount not to exceed $42,000,000 for construction of various general government capital projects; and setting a public hearing for May 10, 2022,for public comment on the proposed financing.

Background:

- The City has been utilizing a multi-year Capital Improvement Program (CIP) and Debt Model since fiscal year 2013-14.
- As a part of that multi-year financial model, the City routinely enters into short-term draw programs with financial institutions through the issuance of interim Limited Obligation Bonds (LOBs).
- The short term draw programs provide cash to reimburse the City for capital expenses prior to the issuance of long term fixed rate financing.
- Staff is seeking Council approval of the initial resolution authorizing the installment financing and related issuance of 2022 Interim Limited Obligation Bonds (LOBs) in an amount not to exceed $42,000,000.
- The projects covered under this debt issuance include a wide range of strategic capital goals the City wishes to meet in public safety, multi-modal transportation, economic development, quality of life, and facility maintenance.
- Specific projects of note covered under this debt issuance include the Broadway Public Safety Station, a portion of the Dr. Wesley Grant/Southside Center project, City Hall elevator modernization, and the Nasty Branch and French Broad West greenways.
- Staff is also seeking Council approval to set a Public Hearing on this debt issuance for May 10, 2022.
- Approval of the final resolution is scheduled for Council's May 24, 2022 meeting.

Council Goal(s):

- A Financially Resilient City

Pro(s):

- Allows the City to move forward with the Capital Improvement Program (CIP) and Draw Program financing.

Con(s):

- None

Fiscal Impact:

- The interim LOBs draw program includes an amount not to exceed $42,000,000.

- Approximately $13,300,000 will likely have already been expended and will be taken on the first draw at closing as a reimbursement to the City.
- The City then expects to spend the remaining monies over a twenty-four-month period.
- The City will then look to convert the program into a long-term fixed rate financing at or around July 2024.
- The debt service payments for this financing are already included in the multi-year CIP/Debt Financial Model.

Suggested Motion:

- Motion to adopt an initial resolution authorizing the City Manager or the Finance Director to pursue and negotiate on behalf of the City debt financing for capital projects with a draw program that includes an installment financing and the related issuance of interim Limited Obligation Bonds (LOBs) in an amount not to exceed $42,000,000 for construction of various general government capital projects; and setting a public hearing for May 10, 2022 for public comment on the preliminary debt resolution.

Attachment(s)

- 2022 Interim Limited Obligation Bond (LOBs) Activity Calendar
- Resolution

2022 Interim Limited Obligation Bonds (LOBs) - Activity Calendar

April 26, 2022: Council adopts Initial Resolution for 2022 Interim Limited Obligation Bonds (LOBs)

May 10, 2022: Council holds Public Hearing on 2022 Interim Limited Obligation Bonds (LOBs)

May 24, 2022: Council adopts Approving Resolution for 2022 Interim Limited Obligation Bonds (LOBs)

June 7, 2022: Local Government Commission (LGC) approval

Jun 15, 2022: Closing of 2022 Interim Limited Obligation Bonds (LOBs)

RESOLUTION 22-___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

WHEREAS, the City of Asheville, North Carolina (the *"City"*) is a validly existing municipal corporation, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the *"State"*);

WHEREAS, the City has the power, pursuant to the General Statutes of North Carolina, to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the City has previously executed and delivered an Installment Financing Contract dated as of June 1, 2012 (the *"2012 Contract"*), between the Asheville Public Financing Corporation (the *"Corporation"*) and the City, an Amendment Number One to the Installment Financing Contract dated as of June 1, 2016 (*"Amendment Number One"*) between the Corporation and the City and an Amendment Number Two to the Installment Financing Contract dated as of November 1, 2017 (*"Amendment Number Two"*) between the Corporation and the City;

WHEREAS, the City has previously executed and delivered an Installment Financing Contract dated as of June 1, 2012 (the *"2012 Contract"*), between the Asheville Public Financing Corporation (the *"Corporation"*) and the City, as amended by an Amendment Number One to the Installment Financing Contract dated as of June 1, 2016 (*"Amendment Number One"*) between the Corporation and the City, an Amendment Number Two to the Installment Financing Contract dated as of November 1, 2017 (*"Amendment Number Two"*) between the Corporation and the City, an Amendment Number Three to the Installment Financing Contract dated as of June 1, 2018 (*"Amendment Number Three"*) between the Corporation and the City and an Amendment Number Four to the Installment Financing Contract dated as of April 1, 2021 (*"Amendment Number Four"*) between the Corporation and the City;

WHEREAS, the proceeds related to entering into the 2012 Contract were used by the City to finance the costs of (1) acquiring, constructing and improving certain streets, sidewalks, greenways, infrastructure and other improvements related thereto in the City; (2) renovating and improving City Hall and the Civic Center; (3) acquiring and installing vehicles and equipment; and (4) refinancing prior installment payment obligations of the City, the proceeds of which were used to finance and refinance improvements to various City facilities;

WHEREAS, the proceeds related to entering into the 2012 Contract, as amended by Amendment Number One, were used by the City to finance the costs of various projects in the City for affordable housing, public safety, transportation, economic development, parks and recreation and repair and renovation to City facilities (the *"2016 Projects"*) and a portion of such 2016 Projects were refinanced from the proceeds related to entering into the 2012 Contract, as amended by Amendment Number Two (the remaining amount was refunded with the proceeds of special obligation bonds);

WHEREAS, the proceeds related to entering into the 2012 Contract, as amended by Amendment Number Three, were used by the City to finance the costs of various projects in the City for affordable housing, public safety, transportation, economic development, parks and recreation and repair and renovation to City facilities, a complete list of which is available in the City Clerk's office (the *"2018*

Projects");

WHEREAS, the proceeds related to entering into the 2012 Contract, as amended by Amendment Number Four, were used by the City in order to refinance the costs of a portion of the 2018 Projects (the remaining portion of the 2018 Projects were refinanced by the City through the issuance of special obligation bonds);

WHEREAS, the City Council of the City of Asheville, North Carolina (the *"City Council"*), hereby determines that it is in the best interest of the City to further amend the 2012 Contract (the *"Amendment Number Five"* and together with the 2012 Contract as previously amended, the *"Contract"*) with the Corporation in order to finance the costs of various projects in the City, including but not limited to projects for affordable housing, public safety, transportation, infrastructure, economic development, parks and recreation, repair and renovation to City facilities, construction of City facilities and acquisition of vehicles and equipment (the *"2022 Projects"* and collectively with the 2012 Projects, the 2016 Projects and the 2018 Projects, the *"Projects"*);

WHEREAS, in order to secure its obligations under the Contract, the City has granted a Deed of Trust, Security Agreement and Fixture Filing dated as of June 1, 2012, as amended by a Notice of Extension and Amendment to Deed of Trust dated as on June 1, 2016 (collectively, the *"Deed of Trust*"), on the real property on which City Hall, the City's Public Works Facility and the City's Municipal Building is located, each such facilities having had and/or will have repairs and renovations financed under the Contract;

WHEREAS, the City hereby determines that the 2022 Projects are essential to the City's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2022 Projects will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform; and that entering into Amendment Number Five is necessary and expedient for the City by virtue of the findings presented herein; and

WHEREAS, the City hereby determines that Amendment Number Five allows the City to purchase the 2022 Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the City; and

WHEREAS, the City hereby determines that the estimated cost of financing the 2022 Projects is an amount not to exceed $42,000,000 and that such cost of the 2022 Projects exceed the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State; and

WHEREAS, although the cost of financing the 2022 Projects pursuant to Amendment Number Five is expected to exceed the cost of financing the 2022 Projects pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the 2022 Projects pursuant to Amendment Number Five and the obligations of the City under the Contract are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring and constructing the 2022 Projects; and (3) insufficient revenues are produced by the 2022 Projects so as to permit a revenue bond financing; and

WHEREAS, the City has determined and hereby determines that the estimated cost of financing the 2022 Projects pursuant to Amendment Number Five reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the City does not anticipate a future property tax increase to pay installment payments falling due under the Contract as a result of entering into Amendment Number Five, but any property tax increase, if necessary, will not be excessive; and

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission (the *"LGC"*), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies; and

WHEREAS, a public hearing on Amendment Number Five after publication of a notice with respect to such public hearing will be held on May 10, 2022 and approval of the LGC with respect to entering Amendment Number Five must be received;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, AS FOLLOWS:

Section 1. ***Authorization to Negotiate Amendment***. That the City Manager or the Finance Director, with advice from the City Attorney and bond counsel, are hereby authorized and directed to proceed and negotiate on behalf of the City for the financing of the 2022 Projects under the Contract and Amendment Number Five for a principal amount not to exceed $42,000,000 to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina.

Section 2. ***Application to LGC.*** That the filing by the Finance Director, or his designee, with the LGC an application for its approval of Amendment Number Five and all relevant transactions contemplated thereby on a form prescribed by the LGC and stating in such application such facts and to attaching thereto such exhibits regarding the City and its financial condition as may be required by the LGC is hereby approved and ratified.

Section 3. ***Direction to Retain Professionals.*** That retaining the assistance of Parker Poe Adams & Bernstein LLP, as bond counsel; DEC Associates, Inc., as financial advisor; and Truist Bank, as trustee, is hereby authorized and ratified and the Finance Director is hereby further authorized to retain such other professionals as he deems necessary in his judgment to carry out the transaction contemplated in this Resolution.

Section 4. ***Public Hearing.*** That notice has been published for a public hearing to be conducted by the City Council at its meeting on May 10, 2022 concerning Amendment Number Five and

the proposed 2022 Projects. The City Clerk is hereby directed to cause a notice of the public hearing, in substantially the form attached hereto as Exhibit A, to be published at least once in a qualified newspaper of general circulation within the City no fewer than 10 days prior to the public hearing.

Section 5. ***Other Acts Authorized.*** That the Mayor, the City Manager, the City Attorney, the Finance Director and the City Clerk, and their respective designees, are hereby authorized, individually and collectively, to do any and all other things necessary to complete the steps necessary for the transactions described in this Resolution.

Section 6. ***Repealer.*** That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 7. ***Effective Date.*** That this Resolution is effective on the date of its adoption.

Read, approved and adopted this 26th day of April, 2022.

_____ _____

City Clerk Mayor

APPROVED AS TO FORM:

_____

City Attorney

EXHIBIT A
NOTICE OF PUBLIC HEARING

The City of Asheville, North Carolina (the "City") has previously entered into an installment financing contract in 2012 and amendments thereto (the "2012 Contract") for the purpose of financing and refinancing various projects in the City. At its April 26, 2022 meeting, the City Council of the City adopted a resolution authorizing the City to proceed with entering into a fifth amendment ("Amendment Number Five") to the 2012 Contract (the 2012 Contract, as previously amended and amended by Amendment Number Five is the "Contract"), pursuant to Section 160A-20 of the General Statutes of North Carolina, in a principal amount not to exceed $42,000,000, under which the City will make certain installment payments, for the purpose of financing various projects in the City, including but not limited to projects for affordable housing, public safety, transportation, infrastructure, economic development, parks and recreation, repair and renovation to City facilities, construction of City facilities and acquisition of vehicles and equipment (the "2022 Projects"). A complete list of the proposed 2022 Projects is available in the City Clerk's office. In connection with the Contract, the City has granted a deed of trust and security agreement (the "Deed of Trust") under which the site of City Hall, the City's Public Works Facility and the City's Municipal Building, and the improvements thereon, have been mortgaged by the City to create a lien thereon for the benefit of the entities, or their assigns, providing the funds to the City under the Contract. City Hall is located at 70 Court Plaza, the Public Works Facility is located at 161 S. Charlotte Street and the Municipal Building is located at 100 Court Plaza, each in Asheville, North Carolina. On payment by the City of all installment payments due under the Contract, including Amendment Number Five and any further amendments of the Contract, the Deed of Trust and any lien created thereunder will terminate and the City's title to the mortgaged property will be unencumbered. The City expects that it will execute future amendments under the Contract to finance and refinance other projects of the City.

NOTICE IS HEREBY GIVEN that on May 10, 2022 at or about 5:00 p.m. in the Banquet Hall of Harrah's Cherokee Center - Asheville, located at 87 Haywood Street, , Asheville, North Carolina, a public hearing will be conducted by the City Council concerning the approval of the execution and delivery of Amendment Number Five and the City's financing of the 2022 Projects. Citizens are encouraged to offer comments and can find additional information on how to participate through the City's Public Input platform at https://publicinput.com/cityofasheville.

/s/ Magdalen Burleson
City Clerk
City of Asheville, North Carolina